

REMARKS

The undersigned respectfully requests that the Examiner reconsider the application and withdraw the present rejection in light of the following remarks.

The Rejections Omit Essential Elements Required to Establish a Prima Facie Rejection

The Examiner's rejection of claims 1, 3-13 and 15-25 under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,892,535 to Allen ("Allen") and the rejection of claims 20-22 under 35 U.S.C. § 103(a) as being unpatentable over Allen in light of U.S. Pub. No. 2004/0205339 to Medlin ("Medlin") both omit essential elements required to establish a prima facie rejection. In particular, the Examiner 1) did not properly reconsider and again examine the application after the Amendment and Response filed May 1, 2009 (the "May 1st Response"); 2) did not cite a reference that discloses at least the claim elements of: (i) a control program received from a host and locally stored on the system, as recited in claim 1, (ii) a previously received microprogram, as recited in claim 12, (iii) a locally stored control program, as recited by claim 21, (iv) a control program or microprogram received from the host asynchronously from the first digital content signal, as recited by claims 22, 24 and 25, or (v) combining a video frame from the decoded first digital content signal and a video frame from the second content signal as the new content, as recited in claims 12 and 20; and 3) did not provide an explicit reason for combining Allen and Medlin. In light of these clear deficiencies in the rejections, withdrawal of the current rejections is requested.

Representative of the errors in the rejections is the Examiner's reliance upon the same sections of Allen to reject amended claim elements without any discussion or reasoning. For example, the Examiner previously relied upon certain sections of Allen to reject the element of a "control program received from a host" and continued to rely upon the same sections even after the element was amended to recite a "control program received from a host and locally stored on the system". Compare Office Action, page 4, 3d paragraph with Office Action dated 01/06/09, page 4, 3d paragraph. As discussed below, Applicant has repeatedly argued the distinction between a control program and a cue tone and specifically argued the

further distinction of locally storing the control program in the May 1st Response. However, the Examiner did not provide a substantive response to the amendment or argument.

In addition, the Examiner has never addressed the substance of the arguments regarding the differences between a cue tone and a control program or a microprogram. As required by MPEP 707.07(f) “[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.” Applicant has repeatedly argued the differences between a cue tone and a control program or a microprogram, yet has never received a substantive response from the Examiner explaining how a cue tone, which is a tone, describes a control program or a micro program, which directs control functionality and produces new content. *See e.g.* May 1st Response, pages 7-9; Submission Accompanying RCE dated April 8, 2008, pages 8-9, Response dated July 11, 2008, pages 8-9.

In the Response to Arguments section, the Examiner states that the Applicant's arguments have been considered but are “moot in view of the new ground(s) of rejection.” *See* Office Action, page 2. However, the Office action does not provide any new grounds of rejection related to the control program or the microprogram. The only new text provided in the Response to Arguments section is “Allen further discloses that the components of the video (e.g. R, G, B color components, etc. are converted to appropriate format (formatting to a new content...reconstruction the video frame) for transmission accordingly.”¹ The Response to Arguments section is not responsive to the arguments presented by Applicant related to cue tones since it merely states that “Allen clearly teaches a control program received from a host which controls and combines that content and transmits as transport stream packets to subscribers.” As previously argued, the cited sections of Allen only describe a cue tone. Moreover, the statement does not reflect the language of claim 1 which requires a control program received from a host and locally stored on the system. There is also no substantive response to the control program arguments in any other section of the Office Action.

¹ Page 4 of the Office Action states that: “combining the plurality of sources into a reconstructed signal (formatting the R, G, B components, etc., to a desired standard...reconstructing the video frame) and transmitting to subscribers accordingly.”

The Claimed Control Program and Microprogram are Distinguishable from the Cue Tones of Allen

Claim 1 requires that the control functionality is *directed by a control program received from a host and locally stored on the system*, claim 12 requires control signals which are controlled by a *microprogram previously received from the host*, and claim 20 requires “control signals which are controlled by a *control program received from the host*.” (*emphasis added*).

Allen describes switching between national and local advertisements based on cue tones and describes at Column 17, lines 43-50 that:

The time of occurrence of each break is generally indicated by the cue tone signal delivered as part of the national network feed signal. Accordingly it is necessary to provide the local cable programmer with the capability of alternately selecting multiple sources of program information to thereby substitute local advertisements in place of national advertisements, in consonance with the cue tone indications, at the discretion of the local programmer.

The cue tones of Allen do not provide the same function as the claimed control program. The control program controls the control functionality/control signals that create new content. A cue tone does not create new content. It merely indicates a point in time within the network feed, such as the start of a pre-roll period, the start of the transfer to ad interval, and the end of the interval, to facilitate a switch to an advertisement.

Claim 1 requires that the control program is received from the host and that it is locally stored on the system. Allen describes that a cue tone is “delivered as part of the national network feed signal” and clearly describes it as a tone. Column 17, lines 43-50; Column 30, lines 51-54 (“The cue tone decode process 1177 may also determine whether the cue tone (e.g., consisting of DTMF_VALUE_1, DTMF_VALUE_2, DTMF_VALUE_3, DTMF_VALUE_4) is valid.”). Those of ordinary skill in the art recognize that a cue tone is a combination of two frequencies or tones. The Office Action does not provide a citation to

Allen that describes that the cue tone received with the national network feed is stored. Claim 12 requires processing and decoding content signals based on a microprogram that was previously received from the host and claim 21 requires that the control program is locally stored. Claim 20 requires a control program received from the host. A cue tone indicates a point in time, such as the start or the end of a period and is used upon receipt. A cue tone is not a program, but a timing indicator.

The Examiner has never substantively responded to the arguments made in support of claim 25, which depends from claim 12 and requires that the microprogram is received from the host asynchronously from the first digital content signal. In rejecting claim 25, the Examiner continues to cite the same sections of Allen, Column 30, line 13-Column 31, line 1+. The cited section of Allen contradicts the Examiner's rejection since it describes that "[e]ach channel of the network feed will include cue tones." Column 30, lines 44-45. Allen describes that the cue tones are received synchronously with the network feed and thus, teaches away from claim 25.

The Claimed Combination of Video Frames is Distinguishable from the Color Components of Allen

Claims 12 and 20 further require combining a video frame from the decoded first digital content signal and a video frame from said second content signal as the new content. The rejection of claim 12 is improper since it relies upon the same rejection as claim 1, even though claim 1 recites "transforming components of said primary signal and said secondary signal into video content; and processing and organizing said video content to form said new content" and claim 12 recites "combining a video frame from the decoded first digital content signal and a video frame from said second content signal as the new content." *See* Office Action, page 6.

The Examiner alleged that Allen describes "combining the plurality of sources into a reconstructed signal (formatting the R, G, B components, etc., to a desired standard...reconstructing the video frame) and transmitting to subscribers accordingly." The cited sections of Allen describe the conversion from the MPEG-2 standard to an NTSC or

PAL standard and the synchronization of the stored audio and video. The R, G, B components are color components. They are not video frames, so even if the R, G, B components are combined, the combination does not describe the combination of a video frame from one signal with a video frame from another signal. The cited sections of Allen describe that “the actual switch over between the national video feed and the video signal generated from the local media server 202 occurs during the vertical blanking interval (VBI) of the national video feed. Column 27, lines 7-10. Allen teaches away from the claimed invention since Allen describes switching between two different video sources, whereas the claimed invention requires combining frames from two different video sources to create new content.

There is No Reason to Combine Allen and Medlin

The Examiner admitted that Allen does not describe new content that includes local weather conditions for the users of national programming in the geographical area. However, the Examiner alleged that Medlin describes multimedia services which include local weather conditions customized per region or locality. The Examiner further alleged that it would have been obvious to combine the references “to target weather reports to various localities or geographical areas to inform users in advance [of] up-coming weather conditions.” Office Action, page 8. The Examiner’s rejection fails to provide an explicit reason for combining the references. A rejection under 103 requires an explicit articulation of the reasons why the claimed invention would have been obvious. Mere conclusory statements are insufficient. *See* MPEP 2141.

The Examiner relied on the sections of Allen that describe inserting an advertisement in a program using cue tones and on the sections of Medlin that describe end user systems tuning into a multicast address to receive customized data. The networks and communications described by Allen and Medlin are different and the Examiner points to no known method to combine the two systems. Even if the systems are combined, there is no reason to believe that the components of each system relied upon by the Examiner would perform the same function in a combined system since significant modifications would be

required to combine the systems. For example, the Examiner did not explain why one would combine the cue tone and the multicast address or how either of the systems could be modified to work with the other. In light of the failure to provide the proper rationale to combine the references, the rejection is improper.

Dependent Claims

Claims 3-11, 23 and 24 depend from claim 1, claims 13, 15-19 and 25 depend from claim 12 and claims 21-22 depend from claim 20. The dependent claims are patentable over the references for at least the same reasons as the independent claims.

REQUEST TO CONSIDER REFERENCES

An Information Disclosure Statement ("IDS") was submitted on September 10, 2002 that included a two page Form PTO-1449 and was accompanied by copies of 96 references. A copy of the IDS and the return postcard confirming the PTO's receipt of the IDS and the copies of the references is attached hereto as Exhibit A. The Examiner initialed some of the references on the Form PTO-1449, but lined through all of the EP and UK references, as shown on the Form PTO-1449 attached hereto as Exhibit B. Copies of the EP and UK references were submitted, as evidenced by the return post card and the inclusion of the references on the PAIR system. It is requested that the Examiner consider these references and so indicate by issuing an updated Form PTO-1449.

CONCLUSION

The foregoing is submitted as a complete response to the Office Action identified above. This application should now be in condition for allowance, and the Applicants solicit a notice to that effect. If there are any issues that can be addressed via telephone, the Examiner is asked to contact the undersigned at 404.685.6799.

Respectfully submitted,

/Brenda O. Holmes/

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EXHIBIT A



Attorney Docket No. W2100/262177

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Kleven, *et al.*

Serial No.: 10/061,476

Filed: January 31, 2002

For: CONTENT PROCESSING AND
DISTRIBUTION SYSTEMS AND
PROCESSES

Art Unit: 2173

Examiner: Unknown

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SEP 30 2002

Assistant Commissioner for Patents
Washington, DC 20231

Technology Center 2100

INFORMATION DISCLOSURE STATEMENT

Sir:

In accordance with Rules 56, 97 and 98 of the Rules of Practice in Patent Cases (37 C.F.R. §§ 1.56, 1.97, and 1.98), the publications listed on the modified Form PTO-1449 are enclosed with this submission for consideration by the Examiner.

Submission of the references provided in this Information Disclosure is not intended to constitute an admission that any reference referred to herein is prior art for this invention unless specially designated as such. Also, in accordance with 37 C.F.R. § 1.97(g), the filing of this

CERTIFICATE OF MAILING (37 CFR 1.8a)

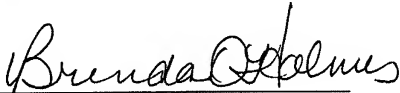
I hereby certify that this correspondence, along with any paper referred to as being attached or enclosed, is being deposited with the United States Postal Service on this 10th day of Sept. 2002 with sufficient postage as first-class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Kathleen Bennett

Information Disclosure Statement shall not be construed to mean that a search has been made or that no other material information as defined in 37 C.F.R. § 1.56(a) exists.

This Information Disclosure Statement is being filed before the issuance of a first office action on the merits of the application (37 C.F.R. 1.97(b)(3)); therefore, no fee is believed to be due. If a fee is due, the Commissioner is authorized to charge such fee and any additional fees that may be due or credit any overpayment to Deposit Account No. 11-0855.

Respectfully submitted,



Brenda O. Holmes
Reg. No. 40,339

Date: Sept. 10, 2002

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Form PTO-1449 INFORMATION DISCLOSURE CITATION IN AN APPLICATION (Use several sheets if necessary)	Docket No.: W2100/262177	Application No. 10/061,476
	Applicants: Kleven, et al.	
	Filing Date: January 31, 2002	Group Art Unit 2173

U.S. PATENT DOCUMENTS

Examiner	Initial	Document Number	Date	Name	Class	Subclass	Filing Date if Appropriate
		6,345,389	02/05/02	Dureau	725	116	
		6,343,379	01/29/02	Ozawa, et al.	725	63	
		6,321,385	11/20/01	Ozawa, et al.	725	140	
		6,314,569	11/06/01	Chemock, et al.	725	37	
		6,300,962	10/09/01	Wishoff, et al.	345	543	
		6,285,685	09/04/01	Burn, et al.	370	474	
		6,282,713 B1	09/28/01	Kitsukawa, et al.	725	36	
		6,266,813 B1	07/24/01	Ihera, Kichi	725	36	
		6,263,507	07/17/01	Ahmad, et al.	725	134	
		6,226,794	05/01/01	Anderson, Jr. et al.	725	131	
		6,181,326	01/30/01	Takahashi	345	158	
		6,175,573 B1	01/16/01	Togo, et al.	370	474	
		6,169,586	01/02/02	Reimann	348	731	
		6,160,989	12/12/00	Hendricks, et al.	455	4.2	
		6,160,988	12/12/00	Shroyer, Stephen	455	3.2	
		6,160,570	12/12/00	Sitnik, Eran	348	1	
		6,154,633	11/28/00	Landgraf, et al.	455	6.2	
		6,128,302	10/03/00	Oh, et al.	348	10	
		6,073,171	06/06/00	Gaughan, et al.	709	219	
		6,052,554	04/18/00	Hendricks, et al.	455	5.1	
		6,049,824	04/11/00	Simonin, Stephen	709	219	
		6,046,760	04/04/00	Jun	348	7	
		6,040,851	03/21/00	Cheng, et al.	348	10	
		6,029,045	02/22/00	Picco, et al.	455	5.1	
		6,008,802	12/28/99	Iki, et al.	345	327	
		5,990,927	11/23/99	Hendricks, et al.	348	6	
		5,986,692	11/16/99	Logan, et al.	348	13	
		5,982,363	11/02/99	Nalif	345	327	
		5,978,012	11/02/99	Ozawa, et al.	348	10	
		5,917,830	06/29/99	Chen, et al.	370	487	
		5,903,314	05/11/99	Nijima, et al.	348	564	
		5,892,536	04/06/99	Logan, et al.	348	13	
		5,877,755	03/02/99	Hellhake, Paul	345	327	
		5,875,007	02/23/99	Zhung, et al.	348	845.2	
		5,861,881	01/19/99	Freeman, et al.	345	302	
		5,859,660	01/12/99	Perkins, et al.	348	9	
		5,815,195	09/29/98	Tam	348	13	
		5,815,194	09/29/98	Ueda, Hiroaki	348	7	
		5,774,170	06/30/98	Hite, et al.	348	9	
		5,768,539	06/16/98	Metz, et al.	395	200.79	
		5,666,293	09/09/97	Metz, et al.	395	200.5	
		5,659,350	08/19/97	Hendricks, et al.	348	6	
		5,652,615	07/29/97	Bryant, et al.	348	9	
		5,619,250	04/08/97	McClennan, et al.	348	10	
		5,608,732	03/04/97	Bestler, et al.	370	474	
		5,600,573	02/04/97	Hendricks, et al.	364	51	
		5,600,366	02/04/97	Schulman, Martin	348	9	
		5,600,364	02/04/97	Hendricks, et al.	348	1	
		5,594,936	01/14/97	Rebec, et al.	455	3.2	
		5,594,490	01/14/97	Dawson, et al.	348	6	
		5,559,549	09/24/96	Hendricks, et al.	348	6	
		5,539,451	07/23/96	Carey, et al.	348	12	
		5,535,229	07/09/96	Hain, Jr. et al.	371	53	
		5,499,046	03/12/96	Schiller, et al.	348	6	
		5,469,207	11/21/95	Chambers	348	9	
		5,446,919	08/29/95	Wilkins, Jeff	455	6.2	

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Form PTO-1449 INFORMATION DISCLOSURE CITATION IN AN APPLICATION (Use several sheets if necessary)	Docket No.: 10/061,476	Application No. 10/061,476
	Applicants: Kleven, et al.	
	Filing Date: January 31, 2002	Group Art Unit 2173

U.S. PATENT DOCUMENTS

	5,440,632	08/08/95	Bacon, et al.	380	20	
	5,432,542	07/11/95	Thibadeau et al.	348	6	
	5,424,770	06/13/95	Schmelzer, et al.	348	9	
	5,412,416	05/02/95	Nemirofsky, Frank	348	10	
	5,400,401	03/21/95	Wasilewski, et al.	380	9	
	5,373,288	12/13/94	Blahut	340	825.08	
	5,369,367	10/25/94	Stockill	348	552	
	5,345,594	09/06/94	Tsuda	455	18	
	5,335,277	08/02/94	Harvey, et al.	380	20	
	5,319,707	06/07/94	Wasilewski, et al.	380	14	
	5,311,423	05/10/94	Clark	358	401	
	5,216,515	06/01/93	Steele et al.	358	335	
	5,182,640	01/26/93	Takano	358	86	
	5,168,353	12/01/92	Walker et al.	358	86	
	5,140,419	08/18/92	Galumbeck et al.	358	142	
	5,113,496	05/12/92	McCalley et al.	395	200	
	5,099,319	03/24/92	Esch et al.	358	86	
	5,036,537	07/30/91	Jeffers, et al.	380	20	
	4,941,040	07/10/90	Pocock et al.	358	86	
	4,924,303	05/08/90	Brandon et al.	358	86	
	4,916,539	04/10/90	Galumbeck	358	142	
	4,814,883	03/21/89	Perine et al.	358	181	
	4,734,764	03/29/88	Pocock et al.	358	86	
	4,704,725	11/03/87	Harvey	380	9	
	4,329,675	05/11/82	Van Hulle	359	97	

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Examiner	Initial	Document Number	Date	Name	Class	Subclass	Filing Date if Appropriate
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FOREIGN PATENT DOCUMENTS

Document Number	Date	Country	Class	Subclass	Translation	
					YES	NO
0 719 482 B1	07/03/96	Europe	H04H	1/00		
0 666 699 A2	02/10/95	Europe	H04N	7/087		
0 396 062 A2	11/07/90	Europe	H04N	7/173		
0 382 764 B1	08/22/90	Europe	H04K	7/00		
0 339 675 B1	11/02/89	Europe	H04N	5/445		
0 288 890 A2	11/02/88	Europe	H04N	1/00		
0 288 152 B1	10/26/88	Europe	H04N	5/45		
0 148 733 A1	07/17/85	Europe	H04N	5/45		
0 132 382 B1	01/30/85	Europe	H04B	1/10		
2 174 874	11/12/86	UK	H04H	1/02		
WO 98/15122	04/09/98	WO	H04N	7/12		
WO 95/11569	04/27/95	WO	H04N	7/08		
WO 95/08226	03/23/95	WO	H04H	1/00		
WO 94/14280	06/23/94	WO	H04N	7/08		
WO 91/05436	04/18/91	WO	H04N	5/44		

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)

Examiner:	Date Considered:
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EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.

The "Received" stamp of the Patent Office imprinted hereon will acknowledge receipt of:

Applicant: Kleven, et al
Application No. 10/061,476 Docket No.: W2100/262177
Title: CONTENT PROCESSING AND DISTRIBUTION
SYSTEMS AND PROCESSES
Filing Date January 31, 2002

PAPERS SUBMITTED:

1. PT/SB 21 Transmittal
2. Supplemental Information Disclosure Statement
3. PTO Form 1449
4. 96 patent reference copies

By: Brenda O. Holmes, Reg. No. 40,339
Date: September 10, 2002

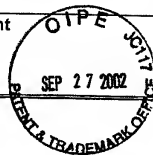


EXHIBIT B



Sheet 2 of 2

Form PTO-1449 INFORMATION DISCLOSURE CITATION IN AN APPLICATION (Use several sheets if necessary)	Docket No.: P/0100/000177	Application No. 10/061,476
	Applicants: Kleven, et al.	
	Filing Date: January 31, 2002	Group Art Unit 2173

U.S. PATENT DOCUMENTS

AS	5,440,632	08/08/95	Bacon, et al.	380	20	
	5,432,542	07/11/95	Thibadeau et al.	348	6	
	5,424,770	06/13/95	Schmelzer, et al.	348	9	
	5,412,415	05/02/95	Nemirofsky, Frank	348	10	
	5,400,401	03/21/95	Wasilewski, et al.	380	9	
	5,373,288	12/13/94	Blahut	340	825.08	
	5,369,367	10/25/94	Stockill	348	552	
	5,345,594	09/06/94	Tsuda	455	18	
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	5,311,423	05/10/94	Clark	358	401	
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	5,168,353	12/01/92	Walker et al.	358	86	
	5,140,419	08/18/92	Galumbeck et al.	358	142	
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	4,916,539	04/10/90	Galumbeck	358	142	
	4,814,883	03/21/89	Perine et al.	358	181	
	4,734,764	03/29/88	Pocock et al.	358	86	
	4,704,725	11/03/87	Harvey	380	9	
✓	4,329,675	05/11/82	Van Hulle	359	97	

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Examiner	Initial	Document Number	Date	Name	Class	Subclass	Filing Date If Appropriate
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FOREIGN PATENT DOCUMENTS

Document Number	Date	Country	Class	Subclass	Translation	
					YES	NO
0 719 482 B1	07/03/96	Europe	H04H	1/00		
0 668 609 A2	02/10/95	Europe	H04N	7/087		
0 396 082 A2	11/07/90	Europe	H04N	7/173		
0 382 704 B1	08/22/90	Europe	H04K	7/00		
0 339 675 B1	11/02/89	Europe	H04N	5/445		
0 288 890 A2	11/02/88	Europe	H04N	1/00		
0 288 152 B1	10/26/88	Europe	H04N	5/45		
0 148 733 A1	07/17/85	Europe	H04N	5/45		
0 132 382 B1	01/30/85	Europe	H04B	1/10		
2 174 874	11/12/86	UK	H04H	1/02		
WO 88/15122	04/09/88	WO	H04N	7/12		
WO 95/11569	04/27/95	WO	H04N	7/08		
WO 95/08226	03/23/95	WO	H04H	1/00		
WO 94/14280	06/23/94	WO	H04N	7/08		
WO 91/05436	04/18/91	WO	H04N	5/44		

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)

Examiner:	Date Considered:
EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.	